

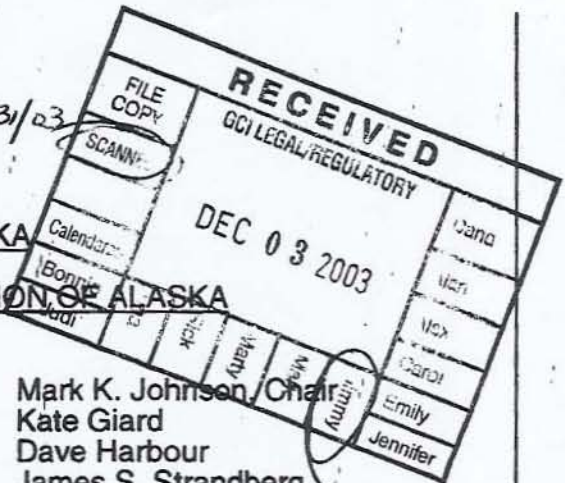
## Exhibit 2

STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

Mark K. Johnson, Chair  
Kate Giard  
Dave Harbour  
James S. Strandberg  
G. Nanette Thompson



In the Matter of the New Requirements of  
47 C.F.R. §51 Related to the Federal  
Communication Commission Triennial Review  
Order on Interconnection Provisions and  
Policies

R-03-7

ORDER NO. 1

**ORDER OPENING DOCKET AND  
SETTING PROCEDURAL SCHEDULE**

BY THE COMMISSION:

Summary

We identify issues raised by the recent Triennial Review Order<sup>1</sup> of the Federal Communications Commission (FCC) and set a procedural schedule for resolution, including the filing of comments and reply comments. If a court stays critical provisions of the Triennial Review Order, we may revise the filing deadlines.

<sup>1</sup>Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers (CC Docket No. 01-338), Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (CC Docket No. 96-98), and Deployment of Wireline Services Offering Advanced Telecommunications Capability (CC Docket No. 98-147), *Report and Order and Order on Remand and Further Notice of Proposed Rulemaking*, FCC 03-36, (rel. Aug. 21, 2003) (Triennial Review Order).



## Background

The Telecommunications Act of 1996 (the Act)<sup>2</sup> established broad interconnection and service resale requirements to promote local market competition. Under the Act, incumbent local exchange carriers (ILECs) must make elements of their networks available on an unbundled basis to any requesting telecommunications carrier at just, reasonable, and nondiscriminatory rates.<sup>3</sup>

To determine what unbundled network elements (UNEs) must be made available by an ILEC, the Act requires the FCC to consider at a minimum whether:

(A) access to such network elements as are proprietary in nature is necessary; and

(B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.<sup>4</sup>

Based on the FCC's interpretation of "necessary" and "impairment," the FCC sets minimum ILEC UNE rate element requirements for the industry.<sup>5</sup>

The FCC has revised its UNE requirements over time, including the list of UNEs that must be provided by the ILEC upon request from another carrier.<sup>6</sup> On August 21, 2003, the FCC issued the Triennial Review Order making sweeping changes to its UNE policies. The FCC directed states to assume specific finding and

---

<sup>2</sup>Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) amending the Communications Act of 1934, 47 U.S.C. §§ 151 et seq.

<sup>3</sup>See 47 U.S.C. §251(c)(3) and (4) for further details concerning the unbundling obligations. A rural ILEC may be exempt from the unbundling obligations under the provisions of 47 U.S.C. §251(f).

<sup>4</sup>47 U.S.C. §251(d)(2)(A) and (B). Emphasis added.

<sup>5</sup>The Triennial Review Order at paragraphs 12-13 provides historical background on the development of the minimum UNE list.

<sup>6</sup>Triennial Review Order, paras. 13-34.



1 review responsibilities to determine whether certain UNE rate elements should be  
2 retained within each state.<sup>7</sup>

3 The FCC imposed deadlines for state action in response to the Triennial  
4 Review Order. Most of these deadlines require state action within nine months of  
5 October 2, 2003, the effective date of the Triennial Review Order. To respond to the  
6 expedited deadlines, we held a special public meeting on September 19, 2003, to  
7 identify how we should best proceed on this matter and what issues were likely to be  
8 contested. We allowed interested persons to provide written presentations.

9 Discussion

10 The FCC in its Triennial Review Order detailed the areas where states  
11 would conduct reviews to resolve UNE provisioning issues. This Docket is opened to  
12 address those issues. The UNE rate elements for which state action may be needed  
13 are:

14 Local Circuit Switching

15 The FCC defines "local circuit switching" as the following:

16 (i) Local circuit switching encompasses all line-side and trunk-side  
17 facilities, plus the features, functions, and capabilities of the switch. The  
18 features, functions, and capabilities of the switch shall include the basic  
19 switching function of connecting lines to lines, lines to trunks, trunks to  
20 lines, and trunks to trunks.

21 (ii) Local circuit switching includes all vertical features that the  
22 switch is capable of providing, including custom calling, custom local area  
23 signaling services features, and Centrex, as well as any technically  
24 feasible customized routing functions.<sup>8</sup>

25 Our obligations under the Triennial Review Order differ depending upon the type of  
26

<sup>7</sup>If we fail to act, then federal regulations allow a petition to be filed with the FCC  
for the FCC to fulfill these obligations in our place. 47 C.F.R. §51.320.

<sup>8</sup>47 C.F.R. §51.319(d)(1).

1 local switching involved. The FCC defines three categories of local switching:

- 2 1) DS0 Capacity (i.e., mass market);<sup>9</sup>
- 3 2) DS1 Capacity and above (i.e., enterprise market); and
- 4 3) Other.

5 Of these three categories, states may act concerning the DS0 and DS1 local switching  
6 rate elements.

7 DS0 Local Circuit Switching – Impairment

8 The FCC concluded that on a national basis, competing carriers are  
9 impaired without unbundled local circuit switching when serving the mass market (i.e.,  
10 DS0 capacity). However, there may be differences across the country that affect  
11 whether a competitor would be impaired if mass market local circuit switching UNEs  
12 were not available. To account for these differences, the FCC requires an ILEC to  
13 provide access to local circuit switching on an unbundled basis to any requesting  
14 telecommunications carrier serving end users using DS0 capacity loops, except where  
15 a state has found that:

- 16 1. the requesting telecommunications carriers are not impaired in a  
17 particular market, or
- 18 2. all such impairment would be cured by implementing transitional  
19 unbundled local circuit switching and that such transitional access has  
20 been implemented.

21  
22  
23 <sup>9</sup>The FCC states that "Mass market customers consist of residential customers  
24 and very small business customers." Triennial Review Order, para.127. The FCC  
25 implies that the enterprise market consists of large business customers that tend to  
26 buy larger packages, and potentially more complex services than do the mass market  
customers.



1 The FCC has set detailed criteria and "triggers" for non-impairment reviews. The FCC  
2 has also set a nine-month deadline for when state reviews must be concluded  
3 (i.e., July 2, 2004).

4 Based on representations made at the public meeting, we believe that at  
5 least one entity (ACS)<sup>10</sup> is likely to dispute the FCC finding of impairment for this UNE  
6 rate element in one or more of the Alaska local markets. Those wishing to dispute the  
7 FCC finding of impairment must make a *prima facie* case, including details of proof in  
8 support of their position.<sup>11</sup> This analysis must include a list of the triggers or other  
9 factors that justify challenge of the FCC national finding. If an interested entity asserts  
10 that impairment may be cured by a transitional access to local circuit switching on an  
11 unbundled basis, it shall explain and file supporting evidence. Those challenging the  
12 FCC impairment must show why we should make an exception from the national  
13 impairment rule for any Alaskan market. Interested persons may also file evidence in  
14 support of the FCC impairment finding.

15  
16  
17 <sup>10</sup>ACS of Anchorage, Inc.; ACS of Fairbanks, Inc.; ACS of Alaska, Inc. and ACS  
18 of the Northland, Inc. (collectively, "ACS").

19 <sup>11</sup>The FCC's regulation at 47 C.F.R. §51.319(d) requires that an ILEC shall  
20 provide local switching on an unbundled basis to a requesting carrier serving end  
21 users using DS0 capacity "except where the state commission has found . . . that  
22 requesting telecommunications carriers are not impaired" or that all such impairment  
23 could be cured by a transitional unbundled switching. We cannot make such a finding  
24 absent relevant evidence. Further, it appears that the FCC intended that we not rule  
25 against the national finding on impairment absent sufficient information on record. For  
26 example, the Triennial Review Order with regard to DS1, DS3, and dark fiber loops  
states that "upon receipt of sufficient evidence," we are obligated to "review the  
relevant evidence associated with any customer location submitted by an interested  
party, and to apply the trigger and any other analysis specified in this Part to such  
evidence." Triennial Review Order, n. 991.



1           Comments and reply comments and associated data on these issues  
2 shall be filed in accordance with the schedule we identify later in this Order.

3 Shared Transport

4           In the Triennial Review Order, the FCC concluded that carriers are  
5 impaired without access to unbundled shared transport only to the extent the carrier  
6 was also impaired without access to unbundled local switching.<sup>12</sup> When responding  
7 on local switching issues, interested entities are encouraged to also discuss shared  
8 transport impairment in their analysis, if they believe it is relevant.

9 DSO Local Circuit Switching Impairment – Batch-Cut Process

10           The FCC believed that, at the national level, a variety of market  
11 impairments were associated with certain physical transfers of customer lines from the  
12 ILEC to the competitor (e.g., "hot cuts"). To reduce this impairment, the FCC asks that  
13 we develop for each relevant market, "batch-cut" processes allowing an ILEC to  
14 simultaneously migrate two or more loops from one carrier's local circuit switch to  
15 another carrier's local circuit switch.<sup>13</sup> In the alternative, we may make a detailed  
16 finding that such a process is not necessary based on an impairment analysis.

17           Given the high number of complaints we have historically received from  
18 customers concerning transfer of service between local carriers and the FCC national  
19 finding on this matter, we find that customers may benefit from development of  
20 batch-cut processes. We plan to proceed with our review of batch-cut processes for  
21 each relevant market.

22           The Triennial Review Order requires that when developing a batch-cut  
23 process, we take a variety of actions, including:

24           <sup>12</sup>Triennial Review Order, para. 534.

25           <sup>13</sup>47 C.F.R. §51.319(d)(2)(ii).

1           1. determining the appropriate volume of loops that should be  
2 included in the "batch";

3           2. adopting specific processes to be employed when performing a  
4 batch cut, taking into account the ILEC's particular network design and cut  
5 over practices;

6           3. determining if the ILEC is capable of timely migrating multiple  
7 lines served using unbundled local circuit switching to a requesting carrier;  
8 and

9           4. adopting rates for batch-cut activities in accordance with FCC  
10 pricing rules for UNEs.

11 Those filing evidence and information on this matter should address the above points.

12           The FCC requires that we complete any initial review concerning batch  
13 processing within nine months from the October 2, 2003, effective date of the Triennial  
14 Review Order. To meet that deadline, we seek evidence, support, and proposals on  
15 what batch-cut processes should be adopted for the relevant markets. Those wishing  
16 to dispute the FCC national finding that a batch-cut process is needed must make a  
17 *prima facie* case, including details of proof in support of their position. While we shall  
18 allow those interested to file evidence and data in support of the need for a batch-cut  
19 process; it remains the burden of those challenging the FCC finding to support why we  
20 should make an exception for any Alaskan market.

21           We intend to proceed simultaneously on the issues of the need for a  
22 batch-cut process, if raised, and what batch-cut process may be adopted. Those  
23 desiring to contest the need for a batch-cut process should cover both issues in their  
24 initial responses to this Order. Initial comments and reply comments and related data  
25 on these issues shall be filed in accordance with the schedule we identify later in this  
26 Order.



1 DS1 Capacity and Above Local Circuit Switching

2 The FCC concluded that an ILEC should not be required to provide  
3 access to local circuit switching on an unbundled basis to requesting  
4 telecommunications carriers for the purpose of serving end-user customers using DS1  
5 capacity and above loops.<sup>14</sup> However, state commissions at their discretion may  
6 petition the FCC to rebut this assumption.<sup>15</sup> Originally, such a petition was to be filed  
7 with the FCC within ninety days from the October 2, 2003, effective date of the  
8 Triennial Review Order (i.e., by December 30, 2003). However, the U.S. Court of  
9 Appeals stayed this ninety-day deadline for the Second Circuit.<sup>16</sup>

10 Based on comments made at the public meeting, we believe that carriers  
11 generally do not dispute the FCC's conclusion in this area. Nor have we reason to  
12 believe the FCC is incorrect in its assumptions on this point. We do not plan to rebut  
13 the FCC's assumptions regarding DS1 capacity and above Local Circuit Switching  
14 absent persuasive evidence that such rebuttal is necessary and appropriate.  
15 Those wishing to dispute the FCC finding of impairment must make a *prima facie* case  
16 demonstrating how to rebut the FCC finding, including details of proof in support of  
17 their position. Such evidence must be filed by December 19, 2003, with reply due  
18 January 9, 2004. We require expedited responses on this issue as we may face  
19

20 <sup>14</sup>The FCC defines a DS1 loop as "a digital local loop having a total digital  
21 signal speed of 1.544 megabytes per second." 47 C.F.R. §51.319(a)(4)(i).

22 <sup>15</sup>47 C.F.R. §51.319(d)(3) and (5). Under section d(5), we have discretion on  
23 whether to file rebuttal with the FCC: "A state commission *wishing to rebut* the  
24 Commission's finding of non-impairment for DS1 and above enterprise switches must  
file a petition with the Commission in accordance with paragraph (d)(3) within 90 days  
from that effective date."

25 <sup>16</sup>The Court granted a stay until the motions before it could be heard and  
26 decided by the Court.



1 imminent deadlines for action should the Court lift its stay of the 90-day deadline  
2 related to this issue.

3 DS1, DS3, and Dark Fiber Loops

4 The FCC concluded that ILECs shall provide to a requesting carrier  
5 access to DS1 loops on an unbundled basis except where we conclude (in accordance  
6 with FCC criteria and "triggers") that "requesting telecommunications carriers are not  
7 impaired without access to a DS1 loop at a specific customer location."<sup>17</sup> Similar  
8 provisions exist for DS3 and dark fiber loop access, with DS3 loop requirements  
9 subject to a cap.<sup>18</sup> We must conclude our initial review of the DS1, DS3, and dark  
10 fiber loop impairment issues within nine months of the October 2, 2003, effective date  
11 of the Triennial Review Order.

12 Comments made at the public meeting indicated no apparent dispute  
13 with the FCC's conclusions regarding DS1 Loops, although ACS indicated it may  
14 dispute the FCC's finding of impairment with regards to DS3 and dark fiber loops.

15 We request information and evidence as to whether, for any of the three  
16 loop services, the FCC "triggers" or criteria for non-impairment have been met for  
17 some or all customer locations in the existing UNE markets. Those disputing a finding  
18 of impairment must provide a *prima facie* case clearly identifying the customer location  
19 for which a finding of non-impairment is sought, all evidence in support of such a  
20

21 <sup>17</sup>47 C.F.R. §51.319(a)(4).

22 <sup>18</sup>47 C.F.R. §51.319(a)(4) through (7). The FCC defines a DS1 loop as "a  
23 digital local loop having a total digital signal speed of 1.544 megabytes per second."  
24 47 C.F.R. §51.319(a)(4)(i). The FCC defines a DS3 loop as "a digital local loop having  
25 a total digital signal speed of 44.736 megabytes per second."  
26 47 C.F.R. §51.319(a)(5). The FCC defines dark fiber as "fiber within an existing fiber  
optic cable that has not yet been activated through optronics to render it capable of  
carrying communications services." 47 C.F.R. §51.319(a)(6).



1 finding, and an identification of what triggers or other factors justify a finding of  
2 non-impairment. Initial comments and reply comments and associated data on these  
3 issues shall be filed in accordance with the schedule we identify later in this Order.

4 Fiber-to-the-Home Loops/ Hybrid Copper-Fiber Loops

5 At the public meeting, ACS indicated that it may seek to dispute the FCC  
6 findings regarding fiber-to-the-home loops and hybrid copper-fiber loops. It is unclear,  
7 however, what actions ACS anticipates we would be able to undertake in regard to  
8 these two types of UNE loop facilities. Unlike previous issues we have referenced, the  
9 FCC reached a conclusion regarding when UNE access to fiber-to-the-home and  
10 hybrid copper-fiber loops was required without the opportunity for the state to create  
11 an exception. We find that these matters are outside the scope of our review under  
12 the Triennial Review Order.

13 Dedicated Transport

14 The FCC determined that an ILEC shall provide a requesting  
15 telecommunications carrier with nondiscriminatory access to DS1, DS3 and dark fiber  
16 dedicated transport on an unbundled basis unless we find that absence of such  
17 access along a particular route would not impair a requesting carrier.<sup>19</sup> No entity  
18 appears to dispute the FCC's findings regarding dedicated transport and we do not  
19 plan to further explore this issue.

20 Discovery

21 We may require the carriers in the subject markets to provide data to  
22 assist in resolving these issues. We request interested entities to suggest whether we  
23 should require specific information beyond what may be submitted through the filing of  
24

25 <sup>19</sup>The FCC also provides a cap on the number of unbundled dedicated DS3  
26 circuits that may be obtained along any single route. 47 C.F.R. §51.319(e)(2)(iii).

1 initial comments. Those interested in responding on this matter, including suggested  
2 lists of information to be filed, must do so by January 27, 2004, with reply comments  
3 due February 6, 2004.

4 Relevant Market

5 In its September 19, 2003, response to our notice, GCI<sup>20</sup> argued that we  
6 should limit our review herein to the service areas of ACS where the carrier has  
7 received a bona fide request for interconnection. We agree that it would be premature  
8 to attempt to dispute the FCC findings on impairment in markets where material local  
9 exchange competition does not presently exist. As a result, we shall limit our review in  
10 this Docket to the ACS markets absent persuasive evidence to the contrary.

11 We believe that our review of these UNE issues must occur at a  
12 sufficiently granular market level to provide meaningful results. This suggests that at a  
13 minimum we should consider as relevant markets those ACS study areas for which  
14 there are current local interconnection agreements, with the potential for review at an  
15 exchange or lower level.

16 Those responding on this matter must identify and support what they  
17 believe are the relevant markets in Alaska for purposes of determining impairment and  
18 responding to this Order. Evidence, proposals, and information provided should  
19 clearly identify for which relevant market the comments and data are directed.  
20  
21  
22  
23  
24

25 <sup>20</sup>GCI Communication Corp. d/b/a General Communication, Inc., and d/b/a GCI  
26 (GCI).



ORDER

1  
2 1. Docket R-03-7 is opened to investigate the issues related to the  
3 Federal Communication Commission Triennial Review Order.

4 2. By 4 p.m., December 19, 2003, any interested person, may file  
5 comments and evidence concerning the DS1 capacity and higher local switching  
6 issues as directed in the body of this Order. Commentors are requested to include a  
7 diskette with their comments in either IBM compatible text (.txt) or MS Word (.doc)  
8 format, or in Adobe Acrobat (.pdf) format.

9 3. By 4 p.m., January 9, 2004, any interested person, may file  
10 comments with the Commission in reply to those filed in response to Ordering  
11 Paragraph No. 2 of this Order. Commentors are requested to include a diskette with  
12 their comments in either IBM compatible text (.txt) or MS Word (.doc) format, or in  
13 Adobe Acrobat (.pdf) format.

14 4. For all other issues, by 4 p.m., January 12, 2004, any interested  
15 person, may file comments, evidence, and proposals as directed in the body of this  
16 Order. Commentors are requested to include a diskette with their comments in either  
17 IBM compatible text (.txt) or MS Word (.doc) format, or in Adobe Acrobat (.pdf) format.

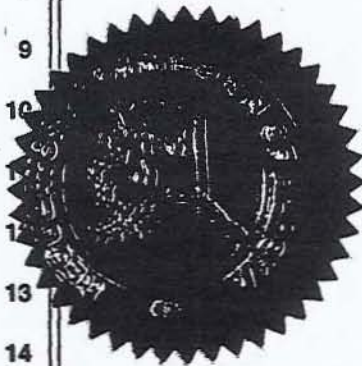
18 5. By 4 p.m., January 27, 2004, any interested person, may file  
19 comments on whether we should require specific information be filed in the record  
20 beyond what may be submitted through the filings made in response to Ordering  
21 Paragraph No. 4 of this Order as further explained in the body of this Order.

22 6. By 4 p.m., February 6, 2004, any interested person, may file  
23 comments in response to those submitted in response to Ordering Paragraph No. 5 of  
24 this Order. Commentors are requested to include a diskette with their comments in  
25 either IBM compatible text (.txt) or MS Word (.doc) format, or in Adobe Acrobat (.pdf)  
26 format.

1           7. By 4 p.m., February 26, 2004, any interested person, may file  
2 comments with the Commission in reply to those filed in response to Ordering  
3 Paragraph No. 4 of this Order. Commentors are requested to include a diskette with  
4 their comments in either IBM compatible text (.txt) or MS Word (.doc) format, or in  
5 Adobe Acrobat (.pdf) format.

6  
7 DATED AND EFFECTIVE at Anchorage, Alaska, this 28th day of November, 2003.

8 BY DIRECTION OF THE COMMISSION  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26



Regulatory Commission of Alaska  
701 West Eighth Avenue, Suite 300  
Anchorage, Alaska 99501  
(907) 276-6222; TTY (907) 276-4533



STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

Mark K. Johnson, Chair  
Kate Giard  
Dave Harbour  
James S. Strandberg  
G. Nanette Thompson

In the Matter of the New Requirements of 47  
C.F.R. §51 Related to the Federal  
Communication Commission Triennial Review  
Order on Interconnection Provisions and  
Policies.

R-03-7

CERTIFICATION OF MAILING

I, Stanley E. Savage, certify as follows:

I am Administrative Clerk III in the offices of the Regulatory Commission  
of Alaska, 701 West Eighth Avenue, Suite 300, Anchorage, Alaska 99501.

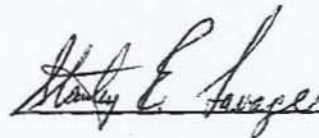
On December 1, 2003, I mailed copies of

ORDER NO. 1, entitled:

ORDER OPENING DOCKET AND  
SETTING PROCEDURAL SCHEDULE  
(Issued November 26, 2003)

in the proceeding identified above to the persons indicated on the attached service list.

DATED at Anchorage, Alaska, this 1<sup>st</sup> day of November, 2003.



Regulatory Commission of Alaska  
701 West Eighth Avenue, Suite 300  
Anchorage, Alaska 99501  
(907) 276-6222; TTY (907) 276-4533

Service of Order R-03-7(1) includes mailings to all known interested persons, and the list is lengthy. In order to minimize copying and mailing costs, the Commission has waived the requirements of 3 AAC 48.100(l) to the extent that the service list herein is not included as part of this mailing. That list is a public record on file with the Commission. Persons interested in obtaining the list should contact the Commission at the address set out to the left.